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pro per

ORIGINAL

FILED

APR 05 2019

CLERK  
United States Bankruptcy Court  
San Jose, California

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
280 South First Streetm Room 3035  
San Jose, California 95113

In Re  
Fatmata John, aka Fatima Carew  
3354 Casaalegno Court, San Jose CA 95148

Debtor.

BANKRUPTCY NO. 18-52831

Baimba John  
3194 De La Cruz Blvd, Suite 10, Santa Clara CA 95054 pro per  
Moving Party

RS NO.

Respondent(s)

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

☐ REAL PROPERTY ☒ PERSONAL PROPERTY

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on 12/26/2018.
2. Procedural Status:
  - a. ☒ Name of Trustee Appointed (if any): Fred Hjelmset
  - b. ☒ Name of Attorney of Record for Trustee (if any): Mariam S. Marshall / Marshall & Ramos, LLP
  - c. ☐ (Optional) Prior Filing Information:  
Debtor has previously filed a Bankruptcy Petition on: \_\_\_\_\_.  
If applicable, the prior case was dismissed on: \_\_\_\_\_.
  - d. ☐ (If Chapter 13 case): Chapter 13 Plan was confirmed on \_\_\_\_\_ or a confirmation hearing is set for \_\_\_\_\_.

Movant alleges the following in support of its Motion:

1. ☐ The following real property is the subject of this Motion:
  - a. Street address of the property including county and state:
  - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):
  - c. Legal description of property is attached as Exhibit A.

- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a) as Exhibit B.
- e. \*Fair market value of property as set forth in the Debtor's schedules: \$ \_\_\_\_\_.
- f. \*Nature of Debtor's interest in the property:

2. ☒ The following personal property is the subject of this Motion (*describe property*):  
\$27,372.50, Motion granted on 03/31/18 to hold in funds in trust; 2012 Can Am Spyder Motorcycle
- a. Fair market value of property as set forth in the Debtor's schedules: \$ 27,372.50 + 9,000 \_\_\_\_\_.
- b. Nature of Debtor's interest in the property: community asset reserved in trust account of Debtor's Attorney
3. \*Fair market value of property according to Movant: \$ 27,372.50 + 9,000 \_\_\_\_\_.
4. \*Nature of Movant's interest in the property: On 03/31/2018 motion was granted for the funds to be held in trust
5. \*Status of Movant's loan:
- a. Balance owing on date of Order for Relief: \$ \_\_\_\_\_
- b. Amount of monthly payment: \$ \_\_\_\_\_
- c. Date of last payment: \_\_\_\_\_
- d. If real property, \_\_\_\_\_
- i. Date of default: \_\_\_\_\_
- ii. Notice of Default recorded on: \_\_\_\_\_
- iii. Notice of Sale published on: \_\_\_\_\_
- iv. Foreclosure sale currently scheduled for: \_\_\_\_\_
- e. If personal property, \_\_\_\_\_
- i. Pre-petition default: \$ \_\_\_\_\_ No. of months: \_\_\_\_\_
- ii. Post-petition default: \$ \_\_\_\_\_ No. of months: \_\_\_\_\_
6. (If Chapter 13 Case, state the following:)
- a. Date of post-petition default: \_\_\_\_\_
- b. Amount of post-petition default: \$ \_\_\_\_\_
7. Encumbrances:
- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: n/a					
2nd:					
3rd:					
4th:					
Totals for all Liens:	\$ 0.00	\$ 0.00		\$ 0.00	

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant:
- ☐ See attached page, if necessary.

8. Relief from the automatic stay should be granted because:

- a. ☒ Movant's interest in the property described above is not adequately protected.
- b. ☐ Debtor has no equity in the ☐ real property ☒ personal property described above and this property is not necessary to an effective reorganization.
- c. ☐ The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or \_\_\_\_\_ days as ordered by this court) have passed since entry of the order for relief in this case, and
- i. the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
- ii. the Debtor/Trustee has
- (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
- (2) ☐ commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- d. ☐ \*Other cause exists as follows (*specify*): ☐ See attached page.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a).

Movant attaches the following:

1. ☐ Other relevant evidence:
2. ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief as requested.
- ☐ Other:

Dated: 04/05/2019

Baimba John pro per  
\_\_\_\_\_  
[Attorney for] Movant

**REQUIRED STATEMENT  
TO ACCOMPANY MOTIONS FOR RELIEF FROM STAY**

All Cases: Debtor(s) Fatmata John aka Fatima Carew Case No. 18-52831 Chapter 7

All Cases: Moving Creditor Baimba John Date Case Filed April 05, 2019

Nature of Relief Sought: ☒ Lift Stay ☐ Annul Stay ☐ Other (describe) \_\_\_\_\_

Chapter 13: Date of Confirmation Hearing \_\_\_\_\_ or Date Plan Confirmed \_\_\_\_\_

Chapter 7: ☒ No-Asset Report Filed on 03/04/2019  
☐ No-Asset Report not Filed, Date of Creditors Meeting \_\_\_\_\_

1. Collateral
  - a. ☐ Home
  - b. ☒ Car Year, Make, and Model 2012 Can Am Spyder Motorcycle Val. \$7,735
  - c. ☒ Other (describe) \$27,372.50 Community asset reserved
2. Balance Owed as of Petition Date \$ 0  
Total of all other Liens against Collateral \$ 0
3. In chapter 13 cases, if a post-petition default is asserted in the motion, attach a payment history listing the amounts and dates of all payments received from the debtor(s) post-petition.
4. Estimated Value of Collateral (must be supplied in *all* cases) \$ 35,107.50
5. Default
  - a. ☐ Pre-Petition Default  
Number of months \_\_\_\_\_ Amount \$ \_\_\_\_\_
  - b. ☐ Post-Petition Default
    - i. ☐ On direct payments to the moving creditor  
Number of months \_\_\_\_\_ Amount \$ \_\_\_\_\_
    - ii. ☐ On payments to the Standing Chapter 13 Trustee  
Number of months \_\_\_\_\_ Amount \$ \_\_\_\_\_
6. Other Allegations
  - a. ☒ Lack of Adequate Protection § 362(d)(1)
    - i. ☐ No insurance
    - ii. ☐ Taxes unpaid Amount \$ \_\_\_\_\_
    - iii. ☐ Rapidly depreciating asset
    - iv. ☒ Other (describe) Not amenable to release funds in all attempts
  - b. ☐ No Equity and not Necessary for an Effective Reorganization § 362(d)(2)
  - c. ☐ Other "Cause" § 362(d)(1)
    - i. ☐ Bad Faith (describe) \_\_\_\_\_
    - ii. ☐ Multiple Filings
    - iii. ☐ Other (describe) \_\_\_\_\_
  - d. Debtor's Statement of Intention regarding the Collateral
    - i. ☐ Reaffirm
    - ii. ☐ Redeem
    - iii. ☐ Surrender
    - iv. ☐ No Statement of Intention Filed

Date: 04/05/2018 Baimba John pro per  
Counsel for Movant

(Rev. 12 /21/09)



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**MINUTE ORDER**

Baimba John vs Fatmata John

17FL004446

Date of Hearing: 02/20/2018

Hearing Start Time: 11:00 AM

Hearing Type: Request for Order: Domestic  
Violence

Comments:

Heard By: Hayashi, Roberta S  
Courtroom Reporter: Susan Yakushi

Location: Department 65  
Courtroom Clerk: Betty Wilson  
Court Interpreter:  
Court Investigator:

**Parties Present:**

Gutierrez, Yadhira Natividad	Attorney
John, Baimba	Petitioner
John, Fatmata	Respondent
Lucero, Fred S	Attorney

**Future Hearings:**

**Exhibits:**

- Both parties are sworn.

Trial set for 3/22/18 at 1:30pm d65. Issue: DV (Remaining issues re: Support are trailing for setting.)

TE: 1/2 day.

**Court orders:**

Sufficient funds shall be set aside to settle the IRS obligation.

Within the next 10 days the respondent shall produce any documents that may be in her possession regarding the tax obligation.

Neither party may fail to inform the other regarding information or liability to the IRS.

Each party shall keep on trust the amount of \$3,200 that shall be used towards the IRS debt.

1/2 proceeds released as stated on the record.



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**MINUTE ORDER**

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2.5% community asset reserved.

Other orders as stated.

Referral to SOC.

Ms. Gutierrez to prepare the order.

All other existing orders to remain in effect.

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## NADAguides Value Report 4/4/2019

### Value Report

2012 Can-Am Spyder RS SE5

### Values

	Suggested List Price	Low Retail	Average Retail
Base Price	\$17,999	\$6,680	\$8,790

### Options (Change)

Total Price	\$17,999	\$6,680	\$8,790
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### Value Type Definitions

**Suggested List** — The manufacturer's (distributors) highest suggested list price in the U.S.A. when the unit was new. Unless indicated, the suggested list price does not include destination charges, dealer set-up, state or local taxes, license tags or insurance.

**Low Retail Value** — A low retail unit may have extensive wear and tear. Body parts may have dents and blemishes. The buyer can expect to invest in cosmetic and/or mechanical work. This vehicle should be in safe running order. Low retail vehicles usually are not found on dealer lots. **Low Retail is not trade-in value.**

**Average Retail Value** — An average retail unit should be clean without obvious defects. All rubber and cables should be in good condition. The paint should match and have a good finish. All lights and switches should work properly. The mileage should be within or slightly higher than the average range. This unit should also pass any emission inspection.

Note: Vehicles/Vessels in exceptional condition can be worth a significantly higher value than the Average Retail Price shown.

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